

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
APPENDIX**

To Be Argued By
GARY P. NAFTALIS

B
PJS

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

COPY RECEIVED
PAUL J. CURRAN
MAY 12 1975
U.S. ATTORNEY
SO. DIST. OF N.Y.

75-1077

UNITED STATES OF AMERICA,

Appellee,

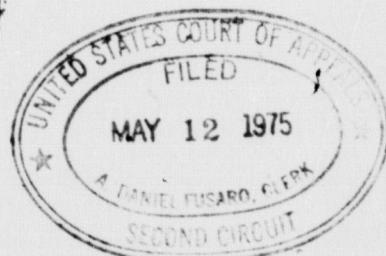
- against -

WILSON TORRES,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF THE
UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX TO
BRIEF FOR APPELLANT



GARY P. NAFTALIS
Attorney for Defendant-
Appellant
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(212) Ju 6 - 2211

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72 CRIM. 391

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

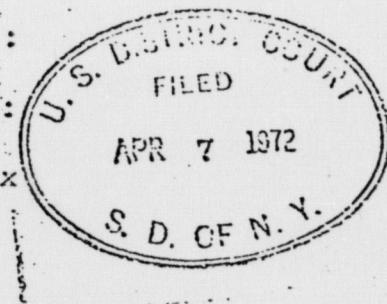
"v"

JOSE SANJURJO, WILSON TORRES,
JESUS SANJURJO, and HECTOR ORTEZ,

Defendants.

INDICTMENT

72 Cr.



The Grand Jury charges:

1. From on or about the 1st day of December, 1971, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, JOSE SANJURJO, WILSON TORRES, JESUS SANJURJO, and HECTOR ORTEZ, the defendants and others to the Grand Jury unknown, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, wilfully and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

WOMacD:sr
72-0753

OVERT ACTS

In pursuance of the said conspiracy and
to effect the objects thereof, the following overt
acts were committed in the Southern District of
New York:

1. On or about January 11, 1972, the defendant JOSE SANJURJO, stated to another that he would sell and deliver one ounce of heroin for \$1,000.00.
2. On or about January 13, 1972, defendant JOSE SANJURJO met with the defendant HECTOR ORTEZ.
3. On or about January 13, 1972, the defendant HECTOR ORTEZ delivered a package of heroin in exchange for \$1,000.00.
4. On or about February 14, 1972, the defendants HECTOR ORTEZ and JESUS SANJURJO stated to another that they would sell and deliver one-eighth kilogram of heroin for \$3,600.00.
5. On or about February 14, 1972, the defendant WILSON TORRES stated that he would deliver the heroin.

(Title 21, United States Code, Section 846.)

(2)

SECOND COUNT

The Grand Jury further charges:

On or about the 18th day of January, 1972
in the Southern District of New York, HECTOR ORTEZ
and JOSE SANJURJO the defendants, unlawfully,
wilfully and knowingly did distribute and possess
with intent to distribute, a Schedule I narcotic
drug controlled substance, to wit, approximately
30.05 grams of heroin hydrochloride.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

G. J. P. Jr.
FOREMAN

Whitney North Seymour, Jr.
WHITNEY NORTH SEYMOUR, JR.
United States Attorney

A TRUE COPY
RAYMOND F.

_____, Clerk
By Raymond F. Turner
_____, Clerk

Seal

CASE

THE UNITED STATES

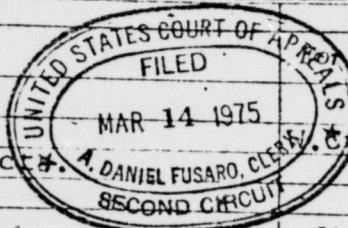
vs.

JOSE SANJURJO-both cts.

WILSON TORRES-ct.1

JESUS SANJURJO-ct.1

HECTOR ORTEZ-both cts.



ATTORNEY
U.S.

75-1077

Cullen MacDonald, Ext. 6432

For Defendant

7-13-75

STATISTICAL RECORD

COSTS

DATE

NAME OR
RECEIPT NO.

REC.

DISB.

J.S. 2 mailed ✓ No open file
4-2-72, 4 respond

Clerk

J.S. 3 mailed (4-2-72, 4 respond)

Marshal

✓ 3-12-72
WHITMAN Comp. #72-0753

Docket fee

Title 21

Sec. 812, 841(a)(1) 841(b)(1)(A)
& 846. Possess with intent
to distribute heroin, I(ct. 2)
conspiracy so to do(ct. 1)

two counts

PROCEEDINGS

4-7-72 Filed indictment.

4-7-72 HECTOR ORTEZ-B/W ordered. Bail fixed at \$50,000. CANNELLA, J
13/M issued

4-17-72 ALL DEFTS - No appearances. B/W's ordered for defts Jose & Jesus Sanjurjo & Wilson Torres. Court directs entry of not guilty plea. Assigned to Judge Wyatt for all purposes. BONSAL, J.

5-12-72 Filed notice of readiness for trial.

6-9-72 Filed (Hesus Sanjur) following papers received from U.S. Magistrate Docket sheet
Criminal complaint and disposition sheet
Notice of appearance
Appearance bond \$5,000

(P.M.)

-4-

	AMOUNT
9-11-72	Trial begun with interpreter as to deft Jesus Sanjurjo. Jury empaneled and sworn.
9-12-72	Trial cont'd Summations and charge. Jury finds the deft Jesus Sanjurjo Guilty on ct 1. Sentence Oct. 27, 1972 2:00 PM Pre-sS.I ordered Bail Cn. Wyatt, J.
9-8-72	Defts. Sanjurjo and Torres - E/W issued.
10-2-72	<i>Jose Sanjurjo, Wilson Torres, Hector Ortega</i> Closed statistically because (X) defendants) is () co-defendant) a () witness) fugitive. In all other respects this case is still pending.
10-27-72	JESUS SANJURO Filed Judgment(Atty. present & interpreter in Court) Deft is committed to the custody of the Atty. Gen. for imprisonment for a period of THREE YEARS on count 1. Pursuant to Ti.18 Sec. 3651, U.S. Code on condition the deft be confined in JAIL or treatment type institution for SIX MONTHS, the execution of remainder of prison sentence suspended, and deft placed on probation for a period of THREE YEARS, subject to the standing probation order of this court, ... Wyatt, J. Issued copies.
3-16-73	JESUS SANJURO Filed true copy of J & C with Marshal's return-Deft. delivered on 10-27-72 to Warden, Federal Detention HQRTS, N.Y.C.
11-28-73	JOSE SANJURO = Deft. present - Larry Greerhurz of Legal Aid, assigned by Magistrate Goettel. Deft. released on Bail fixed in the sum of \$25,000.00 P.R.B. Trial Feb 1, 1974 Room 705 @ 9:30 A.M. --- Wyatt, J.
12-5-73	JOSE SANJURO+ Filed CJA 23 -- Financial Affidavit.
1-23-74	Pre-Trial Conference held. -- Wyatt, J.
2-4-74	JOSE SANJURO= Deft. not present. Pre-trial confer. held. -- Wyatt, J.
2-4-74	SANJURO AND TORRES= Filed the following papers rec'd from Magistrate Raby, (Mag#72-335) Docket entry sheets - Crim Complaint - Disposition Sheet - Notice of Appearance sheets - Appearance Bond's.
2-22-74	JOSE SANJURO= Filed the following papers rec'd from the United States District Court, Office of the Clerk, Puerto Rico, 00904: San Juan. Warrant of Removal on Indictment - Warrant for Arrest of Deft - U.S. Gov't Memorandum Magistrates Temporary Commitment -- Notice of Appearing Counsel - Motion for Reduction of Bail - Waiver of Removal Hearing - Minutes of Proceedings .
2-22-74	WILSON TORRES= Filed the following papers rec'd from the United States District Court, Office of the Clerk, Puerto Rico, San Juan, 00904: Warrant of Removal on indictment - Warrant for Arrest of Deft -- Magistrate's temporary Commitment -- Waiver of Removal Hearing.

2-28-74	JOSE SANJURJO- Filed the following supplemental papers rec'd from U.S. District Court, Office of the Clerk, Puerto Rico, 00904: Minutes of Proceedings - Appearance Bond for the Sum of \$25,000. - Bail Reform Act Form No. 2 - Warrant of Removal on Indictment.
3-13-74	WILSON TORRES- Filed ORDER that Gary P. Naftails, of One Rockefeller Plaza, New York, N.Y. 10020, is hereby added to the Panel of Attorneys for the sole purpose of representing the Deft in the above-entitled case, and that a copy of this order shall be filed with the Clerk of the Court of Appeals, Second Circuit. - EDELSTEIN, C.J.
3-15-74	WILSON TORRES- (Gary P. Naftalis C.J.A. appointment) Deft. present with interpreter Court directs a plea of not guilty be entered. Deft. remanded in lieu of bail fixed in the amount of \$25,000. cash or surety bond. Trial March 25, 1974 9:30 A.M. Rm. 705---Wyatt, J.
3-18-74	JOSE SANJURJO (atty present) Deft. remanded in lieu of bail fixed in the amount of \$75,000. ---Wyatt, J.
3-15-74	WILSON TORRES- Filed Warrant of Removal from District of Puerto Rico.
3-18-74	WILSON TORRES- Filed CJA Copy 5 appointing Gary P. Naftalis, 1 Rockefeller Plaza N.Y.C. 10020 3-15-74---Wyatt, J. mailed notice to A.O.
3-18-74	WILSON TORRES- Filed deft's Financial affdvt CJA 23.
3-21-74	JOSE SANJURJO- Deft. (atty present) withdraws his plea of not guilty on count 1 and pleads guilty to count 1. Sentence April 26, 1974 at 2:30p.m. P.S.I. Ordered. Deft. remanded and bail is revoked and EXCELSIOR---Wyatt, J.
3-22-74	HECTOR ORTEZ- Deft. (Robt. Mitchell assigned CJA, & interpreter present) Court directs entry of not guilty plea. Deft. remanded in lieu of bail fixed in the amount of \$50,000. cash or surety bond. ---Wyatt, J.
3-22-74	HECTOR ORTEZ- Filed deft. financial affdvt--CJA 23.
3-25-74	HECTOR ORTEZ- Attys present - Deft withdraws his plea of Not Guilty and pleads GUILTY to Counts 1 & 2. Sentence 5-3-74 @ 2:30 PM, Room #1106 (Interpreter, Gerando Sanchez) Pre-sentence report ordered. Remand - WYATT, J.
3-25-74	WILSON TORRES- Jury Trial begun, (Interpreter Joaquin R. Guma)
3-26-74	" " - Hearing held and concluded. Trial continued.
3-27-74	" " - Trial cont'd. Verdict GUILTY. Sentence May 10, 1974. (Interp-Marie Elena Cardenes) Pre-Sentence investigation ordered. Deft Torres cont'd remanded in lieu of Bail - WYATT, J.
3-28-74	JOSE SANJURJO- Filed CJA 21, Copy #5, approving payment to Maria Elena Cardenas for interpreting Services on Mar 15, 25, 26, 27, 1974 --- WYATT, J.
3-28-74	HECTOR ORTEZ- Filed CJA 21, Copy #5, authorizing counsel.
3-28-74	JESUS SANJURJO- Filed CJA 21, Copy #5, approving payment for Court Reporting Service.

(Cont'd On Page #1)

DATE	
3-28-74	HECTOR ORTEZ= Filed CJA 21, Copy #5, approving payment for interpreting services dated March 25, 26, 1974 -- WYATT, J.
3-38-74	WILSON TORRES- Files CJA 21, Copy #5, authorizing Court Reporting services.
3-25-74	HECTOR ORTEZ= Filed warrant for arrest with marshal's return-executed 3-22-74.
3-28-74	J.SANJURJO & W. TORRES-Filed CJA 21 copy 2 approving payment to Maria Elena Cardenas as interpreter dated 3-27-74--Wyatt, J.
3-28-74	J.SANJURJO & W. TORRES-Filed CJA 21 copy 2 with memo endorsed-I approve furnishing the transcript of the trial of Jesus Sanjurjo. I do not approve daily transcript at the forthcoming trial of Torres--Wyatt, J. dated 3-26-74. (for Court Reporters)
5-14-74	Filed transcript of record of proceedings, dated 3-25, 26, 1974.
5-9-74	Filed transcript of record of proceedings, dated 9-11-72.
5-9-74	Filed transcript of record of proceedings, dated 10-27-72.
5-17-74	WILSON TORRES - Filed Notice of Appeal from the Judgment entered 5/17/74. (mailed notice) - Leave to Proceed on appeal in forma pauperis. So Ordered Wyatt J.
5-17-74	✓ WILSON TORRES - Filed Judgement & Commitment that deft. is committed to the custody of the atty. General or his authorized representative for imprisonment for a period of One(1) Year, pursuant to the provisions of Section 841 of T.21, USC. Deft. is placed on Special Parole for a period of Three(3) Years, to commence upon expiration of confinement. Wyatt J.
5-17-74	HECTOR ORTEZ - Filed Judgment & Commitment that deft. is committed to the custody of the atty General or his authorized representative for imprisonment for a period of Three(3) Years, on each counts 1 & 2, to run concurrently with each other pursuant to T.18, SEC. 3651,USC, on condition the deft be confined in a jail or treatment type institution for Six(6) Months, the remainder of the sentence of imprisonment is suspended & the deft is placed on probation for a period of Three(3) Years, subject to the standing probation order of this court. Pursuant to the provisions of Sec. 841, of T.21,USC deft. is placed on Special Parole for a period of Three (3) Years to commence upon expiration of confinement. Wyatt J.
5-24-74	JOSE SANJURJO - Filed Judgment & Commitment that deft. is committed to the custody of the atty General or his authorized representative for imprisonment for a period of Eighteen (18) Months, pursuant to the provisions of Section 841 of T/21 USC deft. is placed on Special Parole for a period of Three (3) Years, to commence upon expiration of confinement, Ct. 2 is dismissed on motion of NYCTERXXXXX of defts. counsel with consent of the Gov't. Wyatt J.
5-22-74	Filed CJA 20 Copy 2- approving payment to Robert Mitchell dtd. 3/22/74 Wyatt J. (mailed copy of CJA 20 copy 1 to ADM. OFFICE) (FOR HECTOR ORTEZ)
5-22-74	WILSON TORESS - Filed CJA 21 copy 2 approving payment to Ms Mana Elena Cardenas for Interpreting service on 5/17/74 Wyatt J. (mailed copy CJA 21 copy 1 to ADM.OFFICE)
5-22-74	WILSON TORESS - Filed CJA 21 copy 5 approving payment to Ms Mana Elena Cardenas for interpreting service. Wyatt J.

DATE	PROCEEDINGS	Judgment
5-31-74	HECTOR ORTEZ - Filed true copy of J & C with Marshal's ret. - Deft. delivered 5-17-74 to Warden, F.C.I. Danbury Conn.	
5-31-74	JOSE SANJURJO Filed commitment & entered return. Draft delivered to WARDEN, FED HABEAS HQS NY 5-24 May 31-74 WILSON TORRES - Filed True Copy of Warrant of Removal on indictment from the District of Puerto Rico. Executed 3/12/74.	
1-29-73	Filed PRB without security in the sum of \$25,000.00 In Re: Sanjurjo	
1-31-74	Filed remand in Re: Ortez	
1-31-74	Filed remand in Re: Sanjurjo	
6-1-74	Jose Sanjurjo Filed transcript of record of proceedings, dated 9-11-74	
6-1-74	WILSON TORRES Filed commitment & entered return. Draft delivered to Warden, Fed. Det. HQ NY, NY 5-17-74	
6-6-74	WILSON TORRES Filed notice of certification of record on appeal.	
6-7-74	HECTOR ORTEZ Filed warrant for arrest with marshal's return-warrant returned unexecuted 5-31-74.	
11-29-73	Filed PRB without security in the sum of 25,000.00 RE: Sanjuro.	
5-31-74	Filed remand RE : ORTES	
5-31-74	Filed remand RE: SANJURO	
6-17-74	Filed commitment & entered return, Deft. delivered to, Warden Fed House Det 5/17/74	
7-1-74	WILSON TORRES Filed Notice-The record on appeal has this date been certified and transmitted to the U.S.C.A.	
7-1-74	Filed transcript dtd March 25, 1974	
7-1-74	Filed transcript dtd May 17, 1974	
7-1-74	Filed transcript dtd Sept 11, 12, 1973	
7-23-74	JOSE SANJURJO Filed warrant for arrest and marshal's return dtd. 9-21-72. Warrant returned unexecuted. Deft. sentenced on 5-24-74 by Wyatt, J.	
8-24-74	FILED TRANSCRIPT OF PROCEEDINGS DID MAR. 25-1974	
7-12-74	Jose Sanjurjo Filed transcript of record of proceedings, dated 3/21/74	
8-13-74	WILSON TORRES Filed notice of certification of supplemental record on appeal.	
9-9-74	JOSE SANJURJO Filed Deft's. affidavit and notice of motion for modification and reduction of sentence.	
9-23-74	JOSE SANJURJO Filed Memo, Endorsed on Deft's. motion dated 9-9-74. The motion is denied. SO ORDERED.....Wyatt, J. (mailed notice).	
10-10-74	Deft. Wilson Torres, bail reduced to \$1,000 P.R.E.....Wyatt, J.	
10-15-74	WILSON TORRES Filed Govt's. affidavit for a Writ of Habeas Corpus, directed to Warden, Federal Reformatory, Petersburg, Virginia, Ret. 10-16-74.	

-over-

DATE	PROCEEDINGS
10-23-74	WILSON TORRES-Filed unsecured personal recognizance bond pending appeal in the sum of \$1,000, acknowledged by the Clerk.
11-1-74	WILSON TORRES-Filed Writ of Habeas Corpus-Unsatisfied-10-22-74,
1-7-75	WILSON TORRES-Filed CJA Form 20 Copy 2 approving payment to Gary P. Naftalis, dated 12-20-74.....Wyatt, J. and 12-30-74.....Kaufman, Ch.C.J.
1-8-75	WILSON TORRES-Filed true copy of U.S.C.A. mandate with opinion attached. The judgment of the District Court is reversed and the action is hereby remanded to said District Court for further proceedings in accordance with the opinion of this court.
2-26-75	Deft. (Wilson Torres) & Atty not present. (Reporter Edward Barron) & Interpreter Jacqueline Montagu present. Bench warrant ordered for deft. Atty. Alan Salyman relieved as assigned atty. Deft. Torres & Atty Salyman now present. Bench Warrant vacated bail of \$1,000 P.R.B. continued. Condition of bail for deft. is that he report to U.S. attys office room 450 on March 3,5,7, 1975 at 11:A.M. Trial March 10, 1975Wyatt, J.
3-6-75	WILSON TORRES-Filed ORDER substituting Gary P. Naftalis as attorney for deft. SO ORDERED.....Wyatt, J. (mailed notice)
3-10-75	WILSON TORRES (Atty.Present)2nd trial begun with interpreter Norma Seltzer present.
3-11-75	WILSON TORRES - Filed Judgment & Commitment (Atty. Present) The Deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of One (1) Year, pursuant to the provisions of Sec 841 of T. 21, USC, deft. is placed on Special Parole for a period of Three (3) Years, to Commence Upon Expiration of Confinement. Deft. to receive credit for time already served. Wyatt J. Issued Commitment - 3-13-75
3-11-75	WILSON TORRES - Trial Continued - Summations & charge. Jury Finds the Deft. Guilty.
3-13-75	WILSON TORRES-Filed CJA Form 21 Copy 5 appointing Norma Seltzer as interpreter, dated 3-10-75.....Wyatt, J.
3-13-75	WILSON TORRES-Filed CJA Form 21 Copy 2 approving payment to Norma Seltzer, dated 3-12-75.....Wyatt, J.
3-13-75	WILSON TORRES-Filed deft's. notice of appeal from the judgment of 3-11-75 with MEMO ENDORSED. Deft's. application to proceed on appeal in forma pauperis is granted. SO ORDERED.....Wyatt J. (mailed notice to Wilson Torres, 427 West St.N.Y.C. 10014 & U.S. Attorney's Office.)

2 from them or anything of the sort? Now, I have no obligation,
3 ladies and gentlemen, to make this opening statement. As
4 Judge Wyatt told you under the rules of this Court the
5 defendant can sit back, he doesn't have to do anything.
6 But that is not the way I play the game. I have stated
7 to you what the evidence will show in this case, and I
8 ask you to hold me accountable for what I said to you
9 the evidence will show in this case.

10 You will find at the end of the case
11 that everything that I have told you in this opening
12 address will be substantiated by the evidence and that
13 after you have heard all the evidence, I will most
14 respectfully ask at your hands for a verdict of not
15 guilty for Mr. Wilson Torres.

16 Thank you.

17 THE COURT: The government will call its
18 first witness.

19 MR. CUTNER: The government calls Jose
20 Guzman.

21 JOSE GUZMAN, called as a witness
22 by the Government, having first been
23 duly sworn, testified as follows:
24
25

2 THE COURT: All right.

3 DIRECT EXAMINATION

4 BY MR. CUTTER:

5 Q Mr. Guzman, if you would be sure and speak up
6 so the last juror can hear you we would appreciate it.

7 Sir, how are you employed?

8 A By the New York City Police Department.

9 Q What is your position with the New York City
10 Police Department?

11 A I am on special assignment with the New York
12 Drug Enforcement Administration Task Force.

13 Q What is that?

14 A The New York Drug Enforcement Administration
15 Task Force is an effort among local, Federal and State --

16 MR. HAFTALIS: Your Honor, I object to this.
17 It's irrelevant.

18 THE COURT: Overruled.

19 A Is an effort among State, Federal and City
20 Police to stop the traffic of narcotics in the middle and hi
21 echelon.

22 Q How long have you been with the Police Departm

23 A Seven years.

24 Q What are your principal duties with the Task
25 Force?

2 A As an undercover officer.

3 Q Could you explain to the jury what you mean by
4 an undercover officer?

5 A An undercover officer, the role of an undercover
6 officer is to penetrate or infiltrate the narcotics traffickers
7 and attempt to pursue and arrest the violators.

8 Q How do you conceal your true identity from the
9 narcotics violators with whom you deal?

10 A By acting the same way, dressing the same
11 way, go to the same places that known narcotics traffickers
12 are known to be.

13 Q Now, I'd like to direct your attention to
14 January 10, 1972; and I ask you if you commenced an
15 investigation on that day.

16 A Yes, I did.

17 Q How did you commence the investigation?

18 A I received information from Detective John
19 Miller that he knew a male by the name of Negro whose real
20 name was Jose Sanjurjo, was dealing in large scale of
21 narcotics traffic, in the East Harlem -- the lower east side
22 and the upper east side of Manhattan.

23 Q What did you do with that information?

24 A Detective Miller also gave me the home telephone
25 number to Jose Sanjurjo. At that time, I placed an undercover

2 call to Jose Sanjurjo's residence. On that day I was not
3 able to get in touch with Jose Sanjurjo.

4 Q Did there come a time when you were able to
5 get in touch with him?

6 A Yes, the next day approximately at 10:30 in the
7 morning on January 11th of 1972.

8 Q Can you tell us what you said and what he said
9 on that telephone conversation?

10 A I called Jose Sanjurjo at his residence at
11 telephone number 588-90 -- I believe the last number was 40;
12 and told Jose Sanjurjo that I was a friend of a friend of
13 his, and that I was interested in buying some narcotics.

14 Sanjurjo then told me that he would meet me at
15 121st Street and 2nd Avenue in New York City, the same day,
16 about 7:00 p.m.

17 I also told Sanjurjo that I would be driving
18 a blue Mercury, 1971 blue Mercury, and he stated that he would
19 wait for me at that time.

20 Q By the way, Detective, were these conversations
21 in English or Spanish?

22 A Spanish.

23 Q Did you go to 121st and 2nd that evening?

24 A Yes, I did.

25 Q What happened when you arrived there?

2 A At that day I was driving a 1971 blue Mercury, an
3 I parked the car on the south-east corner of 121st Street and
4 2nd Avenue. While I was parked there, a male who identified
5 himself as Negro approached the car, and at this time I left
6 my car, and we both engaged in conversation. During the
7 conversation, I asked Negro how much he wanted for an ounce
8 of heroin, and he stated he wanted \$1,000 but that he would not
9 give me a sample because his heroin would take from a three
10 to five cut.

11 Q What does that mean, a three to a five cut?

12 A It means that if you buy narcotics in this
13 case, let's say, that you buy an ounce of heroin, and the
14 person who sold it to you tells you that it will take a five,
15 it means that you add up five more ounces of the mixture
16 and you will get six ounces at that time.

17 Q In other words you can dilute it five times,
18 is that the idea?

19 A Yes, sir.

20 Q Did there come a time when you actually
21 purchased an ounce of heroin from Mr. Sanjurjo?

22 MR. NAFTALIS: Your Honor, just for the record,
23 can I note my objection to these January conversations outside
24 his presence?

25 THE COURT: Yes. I understand. Overruled.

2 A Will you repeat the question, please?

3 MR. CUTNER: Mr. Reporter.

4 (The last question was read.)

5 A Yes, I did.

6 Q When was that?

7 A On January 18, 1972.

8 Q Where did that occur?

9 A In front of 2353 2nd Avenue.

10 Q Can you tell us approximately when that was?

11 A Yes, that was in the early part of the evening.

12 I had gone down to that location earlier, and prior to that
13 I made a telephone call to Jose Sanjurjo at his residence, and
14 I told him that I wanted to purchase one ounce of heroin, and
15 he told me that he would see me -- the same date in front
16 of the club.

17 That night I proceeded to that vicinity and I
18 parked my car, across the street from the club.

19 While I was there, I was met by a male
20 who was later identified as Hector Ortez; and after various
21 conversations between Hector Ortez and myself he was going back
22 and forth from the car to the club. At the last time he came
23 over I went over to the 2353, Hector Ortez and Jose Sanjurjo
24 was there, Hector Ortez handed me a brown paper bag, containing
25 a plastic bag which further contained white powder.

2 At that time, I told Hector Ortez that I did
3 not want to take my money out on the street like that. So
4 we entered the hallway of 2353, myself and Hector Ortez.
5 I then counted out \$1,000 in official advance funds which I
6 handed to Hector.

7 At that time, I went back into my car, drove
8 away from the area, and met with Detective Joe Miller, who
9 field tested the package with positive results.

10 Q What is a field test?

11 A Field test is a small vial which contains liquid
12 chemical liquid. At that time you break open the vial into
13 two. You take a little bit of the substance in the package
14 and place it into the vial.

15 At that time, the chemical would turn into a
16 color depending on the drugs.

17 Q What color does it turn if it's heroin?

18 A Purple.

19 Q What happened in this case?

20 A The vial turned purple. The liquid turned
21 purple.

22 Q What did you do with the package of heroin after
23 the field test?

24 A I took it to the New York Drug Enforcement Task
25 Force office where I placed it in an evidence envelope, and the

2 I placed it in the safe until it could be delivered for
3 analysis.

4 MR. CUTNER: May I have these marked as Government's
5 Exhibits 1-B and 1-C for identification.

6 (Government Exhibit 1-B and 1-C marked

7 *** for identification.)

8 Q Detective, I show you Government's Exhibit 1-B
9 for identification, and I ask you if you can identify that
10 e xhibit.

11 A Yes, sir, this is the envelope which I placed
12 the package, I got from Hector Ortez, on January 18, 1972.

13 Q What type of envelope?

14 A It's a lock seal envelope.

15 Q How do you know this is the one you used?

16 A Because my name is on the back and the date.

17 Q And there is nothing in it now, is there?

18 A No, sir.

19 Q Now, I am breaking the seal on Government's
20 Exhibit 1-C for identification. Mr. Clerk, may I have
21 marked as Government's 1-A the brown paper bag and
22 Government's Exhibit 1 the plastic bag.

23 (Government's Exhibits 1 and 1-A marked
24 for identification.)

25 *** Q Mr. Guzman, I show you Government's Exhibits

2 and 1-A for identification and I ask you if you can identify
3 these exhibits.

4 A Yes, sir.

5 Q What are these exhibits?

6 A My initials and the date, 1-18-72 are on both
7 packages.

8 Q And this is the package that you obtained
9 from Hector Ortez on January 18, 1972?

10 A Yes, it is.

11 MR. CUTMER: Your Honor, I offer Government's
12 Exhibits 1 and 1-A.

13 MR. NAFTALIS: No objection on authenticity
14 or chain of custody. For the record, objection because
15 no connection to my client.

16 THE COURT: All right. Overruled. Mark it.

17 (Government's Exhibits 1 and 1-A received in
18 evidence.)

19 Q Now, Mr. Guzman, I'd like to direct your
20 attention to February 14, 1972; and I ask you if you were
21 continuing with this investigation at that time?

22 A Yes, I was.

23 Q What did you do on the evening of February 14,
24 1972?

25 A I met with the group members at 96th Street and

2 1st Avenue in New York City.

3 After that, I proceeded to 121st Street and
4 2nd Avenue, where I parked my car on the south-east corner of
5 121st Street and 2nd Avenue.

6 Q With whom did you meet, if anyone, at that time?

7 A While I was sitting in the car, I observed Hector
8 Ortez coming out of the club next to 2353 2nd Avenue. At this
9 time, I left my car, crossed the street, and met with Hector
10 Ortez.

11 After we exchanged greetings, Hector Ortez
12 and myself then went into my car. At that time, Hector
13 Ortez told me to park my car in front of the club because it w
14 a good idea for me to be parked across the street since the
15 area was hot.

16 I then drove the car across the street to the
17 front of 2353 2nd Avenue.

18 Q You said he said the area was hot. What
19 does that mean?

20 A Well, somebody tells you that the area is hot --

21 MR. NAFTALIS: Your Honor, I object to this.

22 THE COURT: I will permit it.

23 A When somebody tells you that the area is hot,
24 it's because the police are known to be in the area or the
25 police are wise to the fact that narcotics are being sold in t

2 neighborhood.

3 Q All right, well, tell us what happened next.

4 A As I parked my car in front of the club,

5 Hector Ortez asked me if I wanted to purchase any heroin
6 on that night. I told Hector Ortez, yes, but that I
7 wanted to talk to Jose Sanjurjo first.

8 Hector Ortez then told me that Jose Sanjurjo has
9 gone to Puerto Rico, but that he had left a close relative
10 of his taking care of the business; and if I wanted to meet hi
11 relative, I would have to come back later on that night.

12 Q Can you tell us whether or not you discussed
13 a quantity and price with Mr. Ortez?

14 A Yes, I did.

15 Q What was that discussion?

16 A It told Hector Ortez that I wanted to purchase one-
17 eighth of a kilogram of heroin.

18 Q Can you tell us approximately what that is in
19 pounds?

20 A It's a little more or a little bit over a quarter
21 of a pound.

22 At that time I then left the area of 121st Street
23 and 2nd Avenue and met with the surveillance officers.

24 Q After meeting with them what did you do?

25 A Later on that night I again returned to the

2 vicinity of 2353 2nd Avenue where I parked my car. At
3 that time Hector Ortez entered the passenger side of my
4 car. While Hector Ortez and myself were in the car, another
5 male approached the passenger side, and told me that the
6 eighth of a kilo would cost me \$3,600.

7 Q Who was this man?

8 A The male was later identified as Jesus Sanjurjo.
9 The male then -- I told the male that I would buy the eighth
10 of a kilo but that I would like to talk to Jose Sanjurjo first.

11 The male then stated that he was going to
12 get Sanjurjo. The male then entered a white car that was
13 parked behind my car, and drove south on 2nd Avenue.

14 A short time later, I observed the same white
15 Chevrolet parked behind my car. The male then came over to the
16 passenger side of my car, and told me that Negro has told him
17 I could only buy the eighth of a kilo from Jesus -- from Jesus.

18 Then I told Jesus that I still wanted to talk
19 to Jose Sanjurjo. Jose Sanjurjo then went back and forth
20 from my car to his car. Jesus Sanjurjo then entered his
21 car and drove out on 2nd Avenue.

22 Q When you say he went back and forth between
23 your car and the white Chevrolet, what was going on at that
24 time?

25 A I was trying to get Jesus to bring Jose Sanjurjo

1 MBpa

Guzman-direct

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2 over to me before I purchased the eighth of a key.

3 Q And there was some disagreement about whether
4 Jose would come over, was that what it was?

5 A Yes, sir.

6 Q What happened next?

7 A While I was sitting in the car with Hector
8 Ortez, Jesus Sanjurjo walked up to the passenger side of the
9 car and told me that Jose Sanjurjo would meet me around the
10 corner of 120th Street. Myself and Hector Ortez then left
11 my car. I walked south to 120th Street where Hector Ortez
12 stayed at the corner of 120th Street and 2nd Avenue, and I
13 walked west on 120th Street.14 As I was walking west on 120th Street, I
15 observed a white car and a male who was later identified as
16 Wilson Torres seated on the passenger side, and next to the
17 car was Jose Sanjurjo.18 Q The man you saw seated in the car, do you see
19 him here in this courtroom?

20 A Yes, I do.

21 Q Would you point him out for us, please?

22 A The male seated in the middle with the brown
23 shirt.24 MR. CUTNER: May the record reflect that the
25 witness has correctly identified the defendant, your Honor.

2 THE COURT: Yes, it may.

3 Q What happened when you arrived at the white car?

4 A Jose Sanjurjo was standing next to the car, and
5 Jose Sanjurjo told me that I will get the eighth of a key
6 in a few minutes but from now on, if I wanted to buy any more
7 heroin, I would have to do it through his brother, Jesus San-
8 jurjo.

9 I then returned to my car and as I approached
10 120th Street and 2nd Avenue, I met with Hector Ortez, who
11 was standing there with a female.

12 Hector Ortez then told me that the female was his
13 wife, Lillian, and that he would take me to 100th Street and
14 1st Avenue where I would get the package.

15 Lillian then entered the passenger side of the
16 car, of my car, and I entered the driver's side.

17 Lillian then told me to drive to 100th Street,
18 and 1st Avenue, where I would get the package. While I was
19 driving down to 100th Street and 1st Avenue, I observed the
20 white car following me.

21 As I pulled into 100th Street and 1st Avenue,
22 Wilson Torres approached the car, my car from behind, and
23 entered the back seat.

24 Q You had parked at 100th Street and 1st Avenue?

25 A Yes, I was.

1 MBpa

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2 Q And where did Mr. Torres come from?

3 A He came from behind the car.

4 He came from the direction of 100th Street
5 but I don't know which way.6 Q What happened after the defendant got in your
7 car?8 A When Wilson Torres entered the car he was
9 seated in the back seat and then he told me to drive to
10 120th Street and 1st Avenue where I would get the package.11 While I was driving up to 120th Street and 1st
12 Avenue, Wilson Torres and Lillian told me that the
13 connection had to be careful --14 MR. NAFTALIS: Your Honor, I object. I think
15 he should identify who is speaking.

16 THE COURT: Who told you this?

17 THE WITNESS: We had a conversation, your Honor,
18 but I couldn't really say who said what.19 THE COURT: You mean it was either Lillian
20 or Wilson Torres?

21 A Yes, sir.

22 THE COURT: All right.

23 A And as I was driving to 120th Street and 1st
24 Avenue, I was told either by Wilson Torres and Lillian that the
25 connection had to be careful because it was a small package,

1 MBpa

Guzman-direct

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2 it was an eighth of a kilo, and they wanted to make sure that
3 nothing would happen, and that Jesus Sanjurjo would be
4 following me in the white car.

5 I then told them that that is not the way I do
6 business, driving from one place to the other, and that that
7 way, myself and my car get hot, and I could be either taken
8 off or arrested by the police.

9 As we arrived at 120th Street and 1st Avenue,
10 Lillian and Wilson Torres left the car and stated that they'd
11 be back shortly.

12 Shortly after, Lillian came back to the car by
13 herself and then told me to drive to 96th Street and 2nd
14 Avenue where I would get the package.

15 MR. NAFTALIS: I object to any conversation
16 with Lillian, your Honor.

17 THE COURT: Overruled.

18 MR. NAFTALIS: Your Honor, might I approach
19 the bench on this, your Honor?

20 THE COURT: All right.

21 (At the sidebar.)

22 MR. NAFTALIS: Your Honor, this came up in the
23 last trial. I think Mr. Cutner would confirm it with me,
24 that I had objected at that time to any conversations that
25 this gentleman claimed he had with this lady, Lillian Ortez,

1 MBpa

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2 outside the presence of Wilson Torres.

3 THE COURT: I understand this is in the
4 presence of Wilson Torres.

5 MR. NAFTALIS: This one is outside.

6 MR. CUTNER: This one is outside.

7 I have no problems with leaving it out.

8 THE COURT: I thought it was in the presence.

9 MR. NAFTALIS: He had left the car.

10 THE COURT: All right, I will sustain the
11 objection.

12 (In open court.)

13 Q Now, --

14 MR. NAFTALIS: Your Honor, I think you ruled --
15 you sustained the objection. Could you strike out that part
16 of the answer that he had given in response --17 THE COURT: Yes, the last answer was outside
18 the presence of Mr. Torres.

19 MR. CUTNER: That's right.

20 MR. NAFTALIS: Yes, your Honor.

21 THE COURT: Yes, it will be struck out and the
22 jury will disregard it.23 Q Detective, without telling us what Lillian told
24 you, can you tell us what happened after she came back?

25 A We had a conversation, and then I drove to

2 96th Street and 2nd Avenue in New York City.

3 Q What happened at that location?

4 A While I was parked there, Wilson Torres came over
5 to the car and stated that he was going to bring the material
6 in a little while.

7 At that time, Wilson Torres -- Lillian left
8 the car and with Wilson Torres both walked north on
9 2nd Avenue.

10 Q What was the material that he was talking about?

11 A The heroin.

12 While I was parked there on 2nd Avenue and
13 96th Street there was a car accident behind me and the police
14 came, and then after that incident was over, another car stalled
15 right next to my car, parallel to my car on 96th Street and
16 2nd Avenue; and the police also came.

17 While I was sitting there in my car, I observed a
18 white car driving south on 2nd Avenue and going either from east
19 to west or from west to east on 96th Street.

20 After a short time, I pulled away from the area
21 and met with the surveillance officers.

22 Q Moving to February 22, 1972 was there a further
23 development in this case?

24 A Yes, it was.

25 Q What happened on that evening?

2 A On February 22, 1972, myself and Detective Ralph
3 Nieves in my car proceeded to 2353 2nd Avenue.

4 As I got to 2353 2nd Avenue, I pulled alongside
5 parallel to the white car. Wilson Torres was sitting on the
6 passenger's side and Jesus Sanjurjo was sitting on the
7 driver's -- well -- no, I am sorry, Wilson Torres was sitting
8 on the driver's side and Jesus Sanjurjo was sitting on the
9 passenger's side.

10 At this time I motioned with my hands to the
11 white car, and Sanjurjo, Jesus Sanjurjo left the white car and
12 came over to my car on the passenger's side.

13 At this time I told Jesus Sanjurjo that I
14 wanted to purchase one ounce of heroin. Sanjurjo told me to
15 come back later on that night.

16 I then left the area and met with the surveillance
17 officers.

18 Later on that night, I returned again to 2353
19 2nd Avenue, I waited there for awhile, but was not able to either
20 meet -- I didn't meet anybody at that location at that time.

21 MR. CUTNER: I have nothing further, your Honor.

22 THE COURT: All right. Mr. Naftalis.

23 MR. NAFTALIS: Thank you, your Honor.

24

25

2 CROSS EXAMINATION

3 BY MR. NAFTALIS:

4 Q Mr. Guzman, the last thing you testified
5 about was a conversation that you had on the 22nd day of
6 February 1972 with Mr. Jesus Sanjurjo, is that correct?

7 A Yes, sir.

8 Q And Mr. Wilson Torres, that was a conversation
9 where you went up to the vicinity of 121st Street and 2nd
10 Avenue and motioned Mr. Sanjurjo over and had a conversation
11 with him, is that correct?

12 A Yes, sir.

13 Q In that conversation, you asked Mr. Sanjurjo whether
14 he could get you narcotics; is that correct?

15 A Yes, sir.

16 Q And he said he would the next day, is that correct?
17 Or the next night, whenever.

18 A No, he said later on that night, yes, sir.

19 Q And he never showed up?

20 A No, sir.

21 Q No one ever gave you any narcotics?

22 A No, sir.

23 Q This conversation that you just testified to
24 with Mr. Jesus Sanjurjo, Mr. Wilson Torres did not participate
25 in any way in that conversation, isn't that correct?

2 A Yes, sir.

3 Q He didn't say anything, he didn't shake his head
4 agreement?

5 A No, sir.

6 Q You didn't speak to him, he didn't speak to you,
7 right?

8 A No, sir.

9 Q It was only with Jesus?

10 A Yes, sir.

11 Q I want to go back a moment to January. You
12 testified about certain meetings and conversations you had on
13 January 11th and January 18th, 1972; is that correct?

14 A Yes, sir.

15 Q And during the course of those conversations, you
16 talked with Jose Sanjurjo, is that correct?

17 A Yes, sir.

18 Q And Hector Ortez?

19 A Yes, sir.

20 Q Was there anybody else?

21 A Not that I remember, no, sir.

22 Q And one thing is clear, that in January when
23 you say that you purchased these narcotics -- let me withdraw
24 that.

25 In January you testified you purchased these

2 narcotics, which is Exhibit 1, from Jose Sanjurjo, is that
3 correct?

4 A Yes, sir.

5 Q And I think you have just testified that the
6 only people you had any conversations in the world with
7 regarding that are Jose Sanjurjo and Hector Ortez, is that
8 right?

9 A Yes, sir.

10 Q There is no question whatsoever in your mind
11 that you had no conversations or meetings with this man, Wilson
12 Torres, in January, is that correct?

13 A Yes, sir.

14 Q He was not involved at all?

15 A No, sir.

16 Q You didn't see him, you didn't talk to him, in
17 any way, shape or form regarding that January deal, isn't
18 that correct?

19 A Yes, sir.

20 Q As a matter of fact, the first time you
21 ever saw this man, Wilson Torres, in your entire life, was
22 late on the evening of February 14, 1972, is that correct?

23 A Yes, sir.

24 Q And as a matter of fact prior to that February
25 14th, you had never had any conversation whatsoever with this

2 gentleman, is that right?

3 A Yes, sir.

4 Q Now, on February 14, 1972, I believe you
5 testified you went out in an undercover capacity, is that
6 correct?

7 A Yes, sir.

8 Q And the purpose of your mission as an undercover
9 officer on February 14, 1972 was to purchase narcotics, is
10 that correct?

11 A Yes, sir.

12 Q And that would work, you would be giving
13 government money for the purpose of buying narcotics from
14 people you suspected were involved in drug dealing?

15 A Yes, sir.

16 Q Now, on the night of February 14, 1972, you
17 went out with government money, attempted to buy narcotics, and
18 failed, isn't that right?

19 A Yes, sir.

20 Q And that is also true on the night of
21 February 22nd, you went out there and attempted to buy
22 narcotics and again failed?

23 A Yes, sir.

24 Q As a matter of fact, at no time did you ever
25 make a purchase in your life, did you ever make a purchase of

2 narcotics from this man Wilson Torres, isn't that right?

3 A Yes, sir.

4 Q At no time did he ever show you narcotics, isn't
5 that correct?

6 A Yes, sir.

7 Q At no time did you ever give him any money for
8 anything to do with narcotics, is that right?

9 A Yes, sir.

10 Q At no time did anyone in Wilson Torres'
11 presence hand you narcotics, is that correct?

12 A Yes, sir.

13 Q At no time did anyone in Wilson Torres' presence
14 receive any money from you regarding narcotics, is that
15 correct?

16 A Yes, sir.

17 Q THE COURT: We'll have to stop here, Mr. Naftalis.
18 Members of the jury, we'll excuse the jury until 2:15. We'll
19 take as I told you a little longer than normal today because
20 I have to deal with some other matters. We'll resume at
21 2:15 p.m.

22 Thank you.

23 (Luncheon recess taken.)

24

25

2 AFTERNOON SESSION

3 2:15 p.m.

4 (In open court, jury present.)

5 JOSE GUZMAN, resumed.

6 CROSS EXAMINATION

7 BY MR. NAFTALIS (CONTINUED):

8 THE COURT: Mr. Naftalis, all right.

9 Q Mr. Guzman, I'd like to direct your attention
10 to the evening of February 14, 1972. Okay?

11 A Yes, sir.

12 Q I take it you have earlier testified that was
13 the first time in your life that you had ever met this
14 gentleman, Mr. Wilson Torres, is that correct?

15 A Yes, sir.

16 Q On February 14, 1972, prior to any time that
17 you met Wilson Torres, you had conversations, did you not,
18 with a man named Hector Ortez, is that correct?

19 A Yes, sir.

20 Q And Wilson Torres was not involved in those
21 conversations, is that correct?

22 A Yes, sir.

23 Q Then you had conversations with a man named
24 Jesus Sanjurjo, is that correct, or Sanjurjo, however you
25 pronounce it.

2 A Yes, sir.

3 Q And during those conversations you say you
4 negotiated the terms of a purchase of heroin, is that
5 correct?

6 A Yes, sir.

7 Q In any event, Mr. Wilson Torres was not involved
8 or a participant in any of those discussions that you had
9 with Jesus Sanjurjo, is that correct?

10 A Yes, sir.

11 Q He was not involved?

12 A He was not involved.

13 Q Then later you had a conversation with a man
14 named Jose Sanjurjo, is that correct?

15 A Yes, sir.

16 Q And again you discussed -- you had some
17 discussions which related to narcotics, is that correct?

18 A Yes, sir.

19 Q And once again, this man Wilson Torres was not
20 involved in that conversation either?

21 A No, sir.

22 Q In other words, he was not?

23 A He was not, no, sir.

24 Q It was not until after you had these conversations
25 with Jesus Sanjurjo and Jose Sanjurjo about this narcotics

transaction, it was only later in the evening that you ever met this man for the first time in your life; is that correct?

A Yes, sir.

THE COURT: You mean the defendant Torres?

MR. NAFTALIS: Yes, yes, your Honor.

THE COURT: All right.

MR. NAFTALIS: I think the record should reflect that, as your Honor pointed out, when I used the word man before, I meant my client.

THE COURT: Yes.

Q Now later in the night for the first time -- was the first time you ever met Mr. Torres in your life, I believe you testified, is that correct?

A Yes, sir.

Q And you spoke to him a couple of times, is that right?

A Yes, sir.

Q Now, I take it during those conversations he never used the word heroin; is that right?

A No, sir.

Q The only word that was ever used was something called "material," right?

A Yes, sir.

2 THE COURT: Excuse me, it was in Spanish,
3 wasn't it, officer?

4 THE WITNESS: Yes, sir.

5 THE COURT: Whatever it was it was in Spanish,
6 wasn't in English.

7 Q What word did you use when you talked to him?

8 A Material.

9 Q And that means material in English as well
10 as Spanish?

11 A Yes, sir, just a different way of saying it, ye
12 sir.

13 Q In other words, Mr. Torres, in any conversation
14 he had with you later that evening, which were the only
15 conversations he ever had with you in his life, is that
16 correct?

17 A Twice thatnight.

18 Q Those are the only times he's ever spoken to
19 you in his life, to the best of your recollection?

20 A Yes, sir.

21 Q He at no time during either of those
22 conversations later in the evening ever mentioned the word
23 heroin or narcotics or drugs; is that correct?

24 A I would have to say that he did.

25 Q You would?

2 A Yes, sir.

3 Q What did he say?

4 A We were talking in Spanish and a person tells
5 me material or "material," that would actually mean heroin.6 Q In other words, what you are saying is he used
7 the word material?

8 A Yes, sir.

9 Q In Spanish?

10 A Yes, sir.

11 Q Which means material in English, is that
12 correct?

13 A Yes, sir.

14 Q But you are saying that the word material,
15 as far as you are concerned, you use that to mean heroin,
16 that is your belief?17 A I wouldn't as far as I am concerned. I would
18 say my knowledge is that material when you are talking in
19 Spanish would be heroin.20 Q Did he ever tell you that he -- did this man
21 ever tell you at any time during either of those conversations
22 that he understood material to mean heroin?

23 A No, sir.

24 Q So it's your interpretation?

25 THE COURT: No, no, that is simply argumentative.

2 I won't permit that.

3 MR. NAFTALIS: Yes, sir, I made my point.

4 Q You testified, sir, that during these two
5 conversations -- the two conversations that you had with
6 Mr. Torres in the evening, they were very brief, were they
7 not? They didn't take much time?

8 A No, sir.

9 Q Only a couple of minutes, right?

10 A As a matter of speaking I would say maybe from
11 two, three, five minutes.

12 Q Two to three to five minutes was all the time
13 you ever spoke with this man?

14 A Yes, sir.

15 Q You testified, sir, that sometime during this
16 two to three to five-minute conversation that you had with
17 Mr. Torres three years ago, that either he or this lady,
18 Lillian, said something about the connection taking care of
19 itself or protecting itself; is that correct?

20 A Yes, sir.

21 Q Now, sir, you made a report, didn't you, of the
22 event that occurred on February 14th?

23 A Yes, sir.

24 Q That was a detailed full and accurate report?

25 A It is an accurate report but it is not actually

4 detailed as to everything that exactly happened on that night.

5 Q Your report which I show you, which is -- this
6 is your report, isn't it, 3502 for identification?

7 A Yes, sir, it is.

8 Q That report is three pages long, single spaced,
9 typewriting.

10 A Yes, sir.

11 Q And has fairly accurate details of 10:10,
12 10:25 p.m., and contains conversations and all sorts of things
13 like that, doesn't it?

14 A Yes, sir.

15 Q You tried to make that report accurate and
16 honest, is that correct?

17 A Yes, sir.

18 Q As a matter of fact, you are obliged as part of
19 your duties to file an accurate and honest report?

20 THE COURT: Are you offering it in evidence?

21 MR. NAFTALIS: No, your Honor.

22 THE COURT: Then drop the subject. Don't ask
him any more questions about it if you don't intend to offer it.

23 MR. NAFTALIS: I intend to offer part of it,
24 your Honor.

25 Q When you made this report, Mr. Guzman, did you sa

2 anywhere -- let me withdraw it for a minute.

3 When you made this report on February 16, 1972,
4 isn't it a fact, sir, that your memory of events was much
5 fresher than it is today?

6 A I would say yes and no.

7 Q Are you saying, sir, that your memory today of
8 events of February 14, 1972 is better than it was on
9 February 16, 1972, two days later?

10 A Like I said, I don't want to say yes or no.

11 Q Would you recall being questioned earlier this ye
12 under oath in a prior proceeding in this matter and being asked
13 this question and giving this answer:

14 "And your memory, sir --"

15 MR. CUTNER: Page, please.

16 MR. NAFTALIS: Page 72.

17 Q And your memory, sir, on February 16, 1972 was
18 much fresher, was it not, of the events that happened on
19 February 14, 1972, a mere two days before; isn't that
20 right?

21 A Yes, I would say so.

22 Q You remember what happened then better than you
23 do now?

24 A Yes, sir."

25 Do you recall being asked those questions and

2 giving those answers?

3 A I might have, yes, sir.

4 Q And that was the truth, wasn't it?

5 A Yes, sir.

6 Q Now, isn't it a fact, sir, that nowhere in
7 your report, which is Exhibit 3502, for identification, did
8 you ever mention that this gentleman, Wilson Torres,
9 ever said to you at any time anything about protecting any
10 connection?

11 A It's not included in that report, no, sir.

12 Q As a matter of fact in your report you say
13 somebody else said that, didn't you?

14 A At one time, yes, sir.

15 Q You say the lady named Lillian you say said
16 that?

17 A Yes, sir.

18 Q By the way, when you were in an earlier
19 proceeding a short while ago in this same case, when you
20 were asked the same question, didn't you deny under oath the
21 fact that Mr. Torres' name was not in the report relating to
22 that conversation?

23 A Would you repeat the question again, please?

24 Q Do you recall being asked this question and
25 giving this answer, page 75:

2 Q Isn't it a fact, sir, that in your report you
3 pointed out this conversation about which you have just
4 testified involving connections only took place with Lillian
5 and Mr. Torres was not present; isn't that a fact?

6 A No, sir."

7 Do you recall being asked that question and
8 giving that answer?

9 A Yes, sir.

10 Q And you just indicated that's not accurate
11 because the report only refers to Lillian, is that correct?

12 A Yes, sir.

13 Q Not Mr. Torres.

14 A Yes, sir.

15 Q So that testimony you just gave --

16 THE COURT: No, no, I won't permit that sort
17 of question. Stop.

18 MR. NAFTALIS: Yes, sir.

19 Q Now, Mr. Guzman, you also indicated on your
20 examination here something to the effect that you told
21 Mr. Torres or Lillian or whoever was in your car something
22 about, "That's not the way I do business, I'm not going
23 to get burned," or something to that effect, is that
24 correct?

25 A Yes, sir.

2 Q And I take it, is that conversation recounted
3 anywhere in your report?

4 A I don't remember.

5 Q Look at 3502 for identification. See if you
6 can refresh your recollection and see if it's contained
7 anywhere in there.

8 A No, sir.

9 Q Now, Mr. Guzman, later in 1972, you gave
10 testimony, did you not, against somebody else involved in
11 this case, is that correct?

12 A Yes, sir.

13 Q And do you recall in that testimony the
14 fact that you again did not refer to this conversation which
15 you have only testified about today?

16 A Yes, sir.

17 Q You left it out then also?

18 A Yes, sir.

19 Q By the way, before you came here to testify
20 today, I take it you read and examined this report of yours,
21 didn't you?

22 A Yes, sir.

23 Q You studied it in preparation for your testimony?

24 A Yes, sir.

25 Q And you also studied the prior testimony you gave

2 on other occasions, did you not?

3 A Yes, sir.

4 Q And you discussed your past testimony and
5 your present testimony here with Mr. Cutner, didn't you?

6 A Yes, sir.

7 Q And you discussed it in the past, have you not,
8 with other Assistant United States Attorneys?

9 A Yes, sir.

10 Q And one of the things you discussed with
11 Mr. Cutner was the problem about things that you omitted
12 in your past reports and testimony, isn't it?

13 A Yes, sir.

14 Q And that you would be confronted with the fact
15 that you had failed to include things in your report that you
16 now for the first time say happened; is that right?

17 A I wouldn't say -- I would have to say yes and
18 no to that.

19 Q But that was something that was discussed?

20 A Yes, sir.

21 Q And another thing that Mr. Cutner prepared
22 you for was the fact that you were to be questioned on the
23 fact that when you testified under oath against someone
24 else involved in this case you didn't mention certain
25 conversations which you now say happened; is that correct?

2 A Yes, sir.

3 Q Now, you also testified -- did you testify
4 in the Grand Jury, sir, in this case?

5 A I don't recall. I believe I did.

6 Q You believe you did.

7 A I believe I did. I am not sure. I'm not
8 positive.

9 MR. NAFTALIS: Mr. Cutner, could we have a
10 copy of his Grand Jury testimony if he testified in the
11 Grand Jury as he says.

12 MR. CUTNER: Two things. One, Mr. Naftalis
13 knows better than to make requests for documents in the
14 presence of the jury. Number two, Mr. Guzman did not testify
15 before the Grand Jury.

16 THE COURT: All right, then on the basis of
17 both parts, the answer to the request of Mr. Naftalis is
18 rejected.

19 Q In light of Mr. Cutner's statement, do you
20 want to change your answer about whether you testified --

21 THE COURT: No, I won't permit that question
22 either.

23 Let's go on.

24 Q By the way, prior to testifying here, you also
25 discussed your testimony with Detective Miller?

2 A Yes, to some extent, yes, sir.

3 Q And he's discussed his testimony with you?

4 A Yes, sir.

5 Q And he will be testifying here today, is that
6 correct?

7 A Excuse me?

8 Q And he will be testifying here today also?

9 A Yes, sir.

10 Q Mr. Guzman, you also testified on your direct
11 examination that the end of an evening of February 14th
12 there was some sort of car accident?

13 A Yes, sir.

14 Q I think you went into detail about that, is that
15 correct, with tow trucks or police cars in the area?

16 A Yes, sir.

17 Q When you made your report and described the end
18 of the evening, isn't it a fact, sir, that you said nothing
19 about that happening?

20 A Yes, sir.

21 Q As a matter of fact, isn't it a fact that all
22 you said was, "After waiting for about 20 minutes, Patrolman
23 Guzman decided to attempt the purchase of Exhibit number 2
24 at a later date. Patrolman Guzman then left the area, met
25 group number one members, and advised them of what had transpire

2 Is that correct?

3 A Yes, sir.

4 Q Nothing about any car accident or police
5 cars in the vicinity?

6 A No, sir.

7 Q In any event, on the evening of February 14th,
8 you never ended up purchasing any narcotics, is that correct?

9 A Yes, sir.

10 Q From this man or anybody else in the world.

11 A Yes, sir.

12 Q And at no time as you testified did you ever
13 purchase narcotics from this man, is that correct?

14 A Yes, sir.

15 MR. NAFTALIS: I have nothing else, your
16 Honor.

17 THE COURT: All right, anything else,
18 Mr. Cutner?

19 MR. CUTNER: Yes, your Honor.

20 REDIRECT EXAMINATION

21 BY MR. CUTNER:

22 Q Mr. Guzman, you were asked about your report
23 of investigations, Government's Exhibit 3502; and it was
24 brought out that there are certain details that were left
25 out of the report; is that correct?

2 A Yes, sir.

3 Q Can you tell us what the purpose of a report
4 of investigation BND Form 6 is?

5 A These reports, whenever I go on a purchase or
6 attempt purchase or I go out on the street in any investigation
7 I am supposed to make one of these reports and include as much
8 I remember at that time or more or less do a concise report
9 concerning that part of the investigation.

10 Q Am I correct then that your reports don't
11 necessarily --

12 MR. NAFTALIS: I object to the leading then,
13 your Honor. It's his own witness.

14 THE COURT: Overruled.

15 Q Am I correct then that your report or your
16 reports then don't necessarily contain every single detail about
17 what happened in connection with a particular transaction?

18 A That's correct.

19 Q Mr. Naftalis asked you about whether your
20 memory of these events on February 14, 1972, were better when
21 you wrote your report or now, and your answer was to the
22 effect yes, and no. Can you tell us what you meant by that?

23 A Yes, sir. At the time that you write the
24 report, sometimes is things that you forget about it, or you
25 just don't remember right then and there; and as time goes by

2 and your mind goes back to that night, sometimes you may
3 forget something that you have written on the report, and on
4 the other hand you might also remember things that you don't
5 have in the report.

6 Q It's true too that your reports concern a number
7 of individuals, is that correct?

8 A Yes, sir.

9 Q All of which may or may not be indicted and
10 brought to trial, isn't that correct?

11 A Yes, sir.

12 Q So that you may be called upon to give testimony
13 with respect to all of them or none of them or only one of
14 them, isn't that also correct?

15 A That's correct, yes, sir.

16 Q So that when you focus on one particular
17 individual, you may be called upon to remember additional
18 details that weren't included in your report.

19 A That's true.

20 Q Is that right?

21 A Yes, sir.

22 Q Now, you were asked about your testimony in
23 a prior proceeding in 1972, September of 1972. Can you tell
24 us who the defendant was in that case?

25 A Yes, a male known to me and Jesus Sanjurjo.

2 Q In the trial in which you testified where the
3 defendant on trial was Jesus Sanjurjo, were you asked for
4 your conversations with Wilson Torres?

5 A No, sir.

6 Q But it's true, isn't it, that you did testify
7 about at least a part of your conversations with Wilson
8 Torres?

9 A Yes, sir.

10 Q As a matter of fact, didn't you testify as
11 follows, Mr. Guzman: This is at page 10.

12 MR. NAFTALIS: I object to this, your Honor.
13 That is hearsay at this point unless it's inconsistent.

14 THE COURT: No, this is the prior proceeding at
15 which some of your cross examination, as I understand it,
16 was directed. If I am wrong, correct me. Didn't you ask
17 him, didn't you testify at a prosecution of some other person?

18 MR. NAFTALIS: Yes, I pointed out certain
19 discrepancies.

20 THE COURT: Isn't this the same proceeding?

21 MR. NAFTALIS: Yes, it is, your Honor.

22 MR. CUTNER: To be more precise, your Honor,
23 Mr. Naftalis has brought out --

24 THE COURT: Don't let's argue it now. I think
25 because of the cross examination that I ought to allow it.

2 Q Were you asked this question and did you give
3 this answer:

4 MR. NAFTALIS: What page?

5 MR. CUTNER: This is at page 10.

6 "Q Tell us what you did.

7 "A Once I parked on 100th Street and 1st Avenue,
8 I was approached by Wilson Torres, who then instructed me to
9 drive to 120th Street and 1st Avenue. While I was driving,
10 Lillian told me that the connection had to be careful, that
11 I wasn't being followed. As we arrived at 120th Street and
12 1st Avenue, Lillian and Wilson Torres left my car and
13 proceeded east on 120th Street."

14 Was that your testimony in the trial against
15 Jesus Sanjurjo?

16 A Yes, it was, yes, sir.

17 Q And continuing on page 11 -- no, I withdraw that.

18 You were also asked about another proceeding
19 about a year ago, Detective Guzman. Let me ask you if you
20 were asked these questions and gave these answers -- this is
21 at page 57:
22

"Q Tell us the entire conversation, Detective.

"A As soon as Wilson Torres entered the car and sat
24 on the back seat --"

25 MR. NAFTALIS: Your Honor, I object to this.

2 Can I approach the bench?

3 THE COURT: Isn't this the same proceeding at which
4 your cross examination was directed?

5 MR. NAFTALIS: No, your Honor. May I approach
6 the bench on this, your Honor? I will make it plain. I
7 think it should be outside the presence of the jury.

8 THE COURT: All right.

9 (At the side bar.)

10 MR. NAFTALIS: I know this is not --
11 The prior proceedings in which I showed inconsistent statements
12 made by were in his report and in his testimony in the
13 Sanjurjo trial. I made one reference to this transcript in
14 which I read to him a question where he said, "Wasn't your
15 memory better in '72 than it is now." "Yes, sir."

16 What Mr. Cutner is trying to do is read another
17 paragraph -- and that was the only reference to the trial
18 before a year ago -- Mr. Cutner is trying to read in a prior
19 consistent statement here on page 5 which is consistent with
20 his testimony which is absolutely hearsay, totally
21 inadmissible.

22 THE COURT: How is that hearsay? Isn't it a
23 statement by this witness?

24 MR. NAFTALIS: Sure.

25 THE COURT: I will permit it.

2 (In open court.)

3 MR. NAFTALIS: Your Honor, I object.

4 THE COURT: Of course, and your objection is
5 overruled.

6 Q Mr. Guzman, you were asked by Mr. Naftalis
7 about your testimony in a proceeding about a year ago.
8 Correct?

9 A Yes, sir.

10 Q And he asked you whether or not you included
11 in that testimony your conversation with Wilson Torres in
12 the car while you were driving from 100th Street and 1st
13 Avenue to 120th and 2nd Avenue.

14 MR. NAFTALIS: Your Honor, I object to that
15 as a misstatement. That was a reference to the '72
16 transcript, your Honor.

17 THE COURT: All right, I will sustain the
18 objection as to form. Just go ahead and ask him a
19 question. Don't attempt to describe or characterize what
20 Mr. Naftalis asked him. Just read it in the terms of the
21 prior proceeding.

22 Q Were you asked these questions and did you
23 give these answers:

24 "Q Tell us the entire conversation, Detective.

25 "A As soon as Wilson Torres entered the car and sat

2 on the back seat, he told me to drive to 120th Street and
3 2nd Avenue, that he was going to pick up the package.

4 "Q Was anything else said?

5 "A As a matter of fact, he stated that he was
6 going to pick up the material. At this time I proceeded
7 north on 1st Avenue and at this time I stated to the female
8 and the occupant, and the male occupant of the car, that I
9 was getting pissed off because my car was going to get burned
10 with the police; and they might stop me and I might lose my
11 money and my heroin and my car and everything; and that
12 that's not the way that I usually do business, that when I
13 did some kind of a business I would like to go to a location
14 and pay my money and get the package and then get out.

15 "Then Lillian and Torres stated that the
16 connection -- the conversation between Lillian and myself
17 and Torres was that they, that is, the connection had to
18 take care of himself because this was no little package. It
19 was one eighth of a kilo of heroin, and they had to protect
20 each other and, as a matter of fact, that Jesus Sanjurjo
21 would be following me to make sure I wasn't being followed by
22 the police.

23 "When we got to 120th Street and 1st Avenue, I
24 parked the car on the left-hand side of 1st Avenue. At this
25 time Lillian and Torres left the car and walked east on

2 120th Street. Before they left the car Wilson Torres
3 stated that he was going to bring the package."

4 Was that your testimony?

5 A Yes, sir.

6 Q You were asked about the use of the word heroin
7 and the use of the word material. In your discussions with
8 Jose Sanjurjo, did Mr. Sanjurjo ever use the word heroin?

9 A I believe he did but I don't recall at this time.

10 Q Did he use other words referring to the
11 substance or the narcotic, heroin?

12 A Yes, he did.

13 Q What word did he use?

14 A Stuff and material.

15 Q When you had discussions with Hector Ortez
16 about heroin, what words did he use to refer to heroin?

17 A Material.

18 Q And this was including the time on January 18th
19 when he actually delivered an ounce of heroin to you?

20 A Yes, it was, yes, sir.

21 Q At that time he referred to it as material,
22 is that right?

23 A Yes, sir.

24 Q And in your conversations with Jesus Sanjurjo,
25 what words did he use to refer to heroin?

2 A Material.

3 MR. CUTNER: I have nothing further, your
4 Honor.

5 THE COURT: Mr. Naftalis?

6 MR. NAFTALIS: Yes, sir.

7 RECROSS EXAMINATION

8 BY MR. NAFTALIS:

9 Q Mr. Cutner just read a little while ago some
10 testimony you gave in 1974, is that correct?

11 A Yes, sir.

12 Q I want to go back to what I was questioning
13 about in 1972, sir; where you brought out certain conversations
14 were not included in your prior sworn testimony against Jesus
15 Sanjurjo, is that right?

16 A Yes, sir.

17 Q Mr. Cutner read from page 10 and started to
18 read on page 11 but dropped it. I'd like to finish the part
19 he dropped.20 "A Subsequently Lillian returned to the car and
21 stated that I would get a package at 96th Street and 2nd
22 Avenue. While I was driving down to 96th Street and 2nd Avenue
23 again observed the white car following my car, and while I was
24 driving Lillian stated that Jesus Sanjurjo had to be careful
25 because it was a large amount. When I got to 96th Street and

2nd Avenue, I parked the car and waited there for a few
minutes. Subsequently, Wilson Torres approached the car
and told me that the package would be delivered in a
few minutes."

That was your testimony in '72, is that
correct?

A Yes, sir.

Q And Lillian was the one who according to your
testimony when you first testified under oath about all
these matters, was the one you said who you had these
conversations with, is that correct?

A Yes, she also mentioned this, yes, sir.

Q No mention of Wilson Torres, although you
recounted all the events of that evening, is that correct?

A Yes, sir.

MR. NAFTALIS: May I have the original of
3502.

(Document handed to Mr. Naftalis.)

Q Now, on cross examination I asked you about
certain things in your report; is that correct?

A Yes, sir.

Q That is a three-page typewritten single-spaced
report of the event of February 14th, is that right?

A Yes, sir.

2 Q And we established, did we not, that certain
3 things that you now say happened are not included in your
4 report; is that correct?

5 A Yes, sir.

6 Q Mr. Cutner asked you some questions about
7 what should or should not be included in your report; is
8 that right?

9 A Yes, sir.

10 Q I'd like to offer so the jury can see it, 3502
11 for identification.

12 THE COURT: Any objection?

13 MR. CUTNER: I have no objection, your Honor.

14 THE COURT: All right, without objection it will
15 be received. Mark it as a defendant's exhibit.

16 MR. NAFTALIS: May I have that back just one
17 second, your Honor?

18 MR. NAFTALIS: Your Honor, I am sorry to bother
19 you again. This is just the last time, at the bench for one
20 second, please?

21 THE COURT: Well, what's the problem?

22 MR. CUTNER: Now Mr. Naftalis wants to make an
23 offer of a portion of the report.

24 MR. NAFTALIS: I don't think it should --

25 MR. CUTNER: I think it all ought to go in.

4
5 THE COURT: Are you offering it or not?6 MR. NAFTALIS: Your Honor, there is one line
7 which does not relate to the events of February 14th and which
8 you excluded in a ruling before this case any reference to
9 here and I don't think it should be in this report, this one
10 line.

11 (At the side bar.)

12 THE COURT: Now, I understand that you want to
13 offer this report and you want to exclude something.14 MR. NAFTALIS: Yes, sir. Every part of this
15 report except this thing, through number 11 here relates to
16 the events of February 14th. This line here, your Honor,
17 relates to events that occurred subsequently; prior to the
18 last trial you ruled that this would be inadmissible when
19 Mr. Cutner attempted to elicit testimony about this February 15th
20 event so I certainly don't want to offer this one line.
21 Everything save that one line.22 THE COURT: So you want to offer this report
23 dated February 16, 1972, except that you want to exclude what?

24 MR. NAFTALIS: One --

25 THE COURT: Paragraph 12?

MR. NAFTALIS: Which relates to a different day
in an area where you excluded Mr. Cutner from putting in any

2 evidence at the last trial.

3 THE COURT: And Mr. Cutner, what is your
4 suggestion?

5 MR. CUTNER: I just think as long as we are
6 putting in a report that is all hearsay I don't see why the
7 whole report shouldn't go in.

8 THE COURT: Well, I think you can -- I will
9 permit you to offer it either all or none. You don't have
10 to offer it all but if you want to offer it I think it all
11 has to be offered.

12 MR. NAFTALIS: Your Honor, might I -- this is the
13 last -- might I think about this overnight or at least for
14 awhile and then I can make a decision on this? It won't
15 hold up anything with this witness.

16 THE COURT: All right, because you won't need him

17 MR. NAFTALIS: No.

18 THE COURT: All right, then we'll mark it for
19 identification and then you can think about it.

20 MR. NAFTALIS: Thank you very much, your
21 Honor.

22 (In open court.)

23 THE COURT: Mr. Clerk, mark this report for
24 identification and we'll rule on it later.

25 (Defendant's Exhibit A marked for identification.

2 (In open court, jury present.)

3 THE COURT: Madam Foreman, ladies and gentlemen
4 of the jury:

5 This case is now about to be submitted for your
6 decision on the issues of fact here involved, and of course,
7 your decision on those issues of fact determines whether your
8 verdict is guilty or not guilty.

9 In making your decision, you members of the
10 jury act as ministers of justice, and you discharge an
11 obligation and responsibility which it is not too much to
12 call sacred. In making your decisions, you are to adopt
13 an attitude of complete fairness and complete impartiality.
14 You are to appraise the evidence calmly and objectively, and
15 without any bias or prejudice for or against the government or
16 for or against the defendant. You decide all conflicts and
17 differences in the evidence. You determine the credibility
18 of all witnesses. You are the sole and exclusive judges
19 of the facts. You draw whatever reasonable inference or
20 inferences are justified from the facts as you may find those
21 facts to be.

22 My function at this point is to give you
23 instructions to the applicable law, and your duty is to take
24 my instructions and apply them to the facts as you find the
25 facts to be.

2 Now, in determining what are the facts, you
3 must rely on your own recollection, which is what controls.
4 What I might say to you or what counsel have said to you this
5 morning or yesterday at any time during the trial is not
6 evidence, it's not binding on you, and is not to be taken
7 in place of your own recollection, which I repeat is what
8 controls.

9 The fact that I may have from time to time
10 sustained objections, granted or overruled motions and the
11 like, are not to be considered in any way by the jury. My
12 rulings are based on matters of law with which the jury has no
13 concern, and no ruling made by me at any time is to be taken
14 as any indication of any view by me as to the guilt or innocence
15 of the defendant or the truth or falsity of any of the
16 charges.

17 You are not to assume that I have any opinion
18 as to the guilt or innocence of the defendant. The fact
19 that these rulings were made, as I say, depends entirely
20 on questions of law. Similarly what is said between the
21 Court and counsel, the jury should disregard, and if at any
22 time during the trial I may have seemed to be impatient, that
23 is a fault on my part, and I have to ask the jury to disregard
24 it.

25 I may have -- I have forgotten -- sometimes I ask

2 questions of a witness. If I do, that is only for the purpose
3 of making something clear to the jury, and again is not to be
4 taken as any indication on my part of any view on my part as
5 to the truth of the charges or the credibility of the witness.

6 Now the indictment, members of the jury, is a
7 charge. It's an accusation. It is not evidence, and no proof
8 of guilt of the defendant. He, the defendant, has pleaded not
9 guilty. The fact that the government is prosecuting the case
10 and that the prosecution is in the name of the United States
11 of America does not entitle the government or its witnesses
12 to any greater consideration than that afforded any other
13 party. The government and its witnesses, however, are
14 entitled to no less consideration. All parties, government
15 and individuals alike, stand here as equals.

16 The government has the burden of proving the
17 charge here beyond a reasonable doubt. A defendant does not
18 have to prove his innocence. He is presumed to be innocent
19 until his guilt has been proved to your satisfaction beyond
20 a reasonable doubt, and members of the jury, in weighing the
21 evidence, you should consider the quality and the substance
22 of the evidence, and not the quantity of the evidence or
23 the number of witnesses.

24 The expression reasonable doubt. A reasonable
25 doubt is a doubt founded upon reason and one which arises

from the evidence or the lack of evidence. It is a doubt which a reasonable person has after carefully weighing all the evidence. It is a doubt which is substantial, and not merely shadowy. Reasonable doubt is one which appeals to your common sense, your judgment, your experience, but members of the jury, reasonable doubt is not an excuse to avoid the performance of an unpleasant duty. Reasonable doubt is not sympathy for a defendant. It is not a vague, speculative, imaginary doubt; but such a doubt as would cause prudent persons to hesitate before acting in matters of importance to themselves. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. If that were the rule, few men or women, however guilty, would ever be convicted because it is practically impossible for a person to be absolutely and completely convinced of any fact which is not by its nature capable of being proved to a mathematical certainty.

In consequence, the law in a criminal case is that proof must be beyond a reasonable doubt, and not beyond all possible doubt.

Of course, the fact that three of the four defendants named in this particular indictment are not here on trial has nothing to do with the issues which are before this jury. No adverse inference against the defendant or the

2 government may be drawn from the fact that the other three
3 defendants are not here on trial. The question is solely,
4 is Wilson Torres, defendant here on trial, guilty or not
5 guilty.

6 The indictment charges the defendants, including
7 the defendant here on trial, Wilson Torres, with an offense
8 under the Comprehensive Drug Abuse Prevention and Control Act
9 of 1970. This act was passed by Congress because of a concern
10 with the illicit distribution of narcotic drugs which have a
11 substantial and a detrimental effect on the health of our
12 people and the welfare of the country.

13 The part of the act which is specifically
14 applicable to the charge here is called the Controlled
15 Substances Act. It is not necessary for you to remember the
16 names of the acts or the numbers of the applicable sections.
17 It is only necessary for you to remember what offenses the
18 act forbids, and the essential elements, as I will explain them,
19 of the offense here charged to this defendant Torres.

20 The term controlled substance is used in the
21 acts to refer to any drug included in five schedules
22 established by Section 812 of Title 21, a part of the Controlled
23 Substances Act.

24 Heroin is an opium-derivative, and is a narcotic
25 drug included in schedules I, and II of the Controlled

2 Substances Act. Heroin is thus a controlled substance.
3 Among other things it is made unlawful by Section 841 of
4 Title 21 of the United States Code, a part of the Controlled
5 Substances Act, for any person knowingly or intentionally to
6 distribute or to possess with intent to distribute any
7 controlled substance such as heroin.

8 To distribute a controlled substance means to
9 deliver it. That is, the actual constructive or attempted
10 transfer of the substance. The statute as you have just
11 heard makes it unlawful to possess with intent to
12 distribute any controlled substance such as heroin. Possess
13 is the term used in the statute. This may be of two types,
14 either actual or constructive possession.

15 I have just explained some of the provisions of
16 the applicable law, the Controlled Substances Act, and I have
17 explained some of the conduct prohibited. But, members of
18 the jury, the defendant Wilson Torres is not here charged with
19 a violation of the sections which I have explained and to
20 which I have referred, and which sections are sometimes called
21 basic or substantive offenses. He, the defendant Wilson Torre
22 in this indictment with the others is charged instead with
23 having conspired with the others to violate those sections.
24 A conspiracy is a separate and distinct offense from a
25 violation of the basic and substantive offenses. A conspiracy

which is sometimes referred to as a partnership in crime, because it involves collective or organized action, presents a greater potential threat to the public than the illicit activity of a single wrongdoer.

Group association or organized activity renders detection more difficult than in the instance of a single individual. For these and other reasons, Congress has enacted a special law which provides that any person who conspires to violate the Controlled Substances Act is guilty of a separate offense.

So the charge against the defendant Wilson Torres is that he conspired with the others to violate the laws as I explained them relating to narcotic drugs.

I read to you the indictment yesterday and I will not read it to you again this morning. I will, however, at the end of my instructions, give a copy of the indictment to Madam Foreman for the convenient use of the jury during your deliberations; and again, I remind you that the indictment will be given simply for your convenient use. It's not evidence. The defendant pleaded not guilty.

Now, in order to support a verdict of guilty, the government must prove beyond a reasonable doubt the following essential elements:

One: The existence of the conspiracy as charged

2 in the indictment.

3 Two: That the defendant Wilson Torres knowingl
4 associated himself with the conspiracy.

5 And three: That one of the conspirators
6 knowingly committed in the Southern District of New York, and
7 that includes the Island of Manhattan, and it includes the
8 Bronx, one of the conspirators must have committed in the
9 Southern District at least one overt act; and I will
10 explain this expression "overt act" in a few moments.

11 It is not required, members of the jury, that
12 the government prove that the conspiracy started and ended on
13 the dates alleged in the indictment. It is sufficient if you
14 find that in fact a conspiracy was formed and existed for
15 some period of time within the period specified in the
16 indictment; and that at least one overt act was committed
17 in furtherance of the conspiracy.

18 The offense of conspiracy is complete when the
19 unlawful agreement is made, the unlawful partnership is
20 formed, and any single overt act is thereafter knowingly
21 committed by one at least of the conspirators. Now we ask,
22 naturally, what is a conspiracy? It is a combination or
23 agreement of two or more persons by concerted acts to
24 accomplish a criminal or unlawful purpose as here charged to
25 distribute or possess with intent to distribute a narcotic dru

2 namely heroin. It is not necessary for the government to
3 prove all of the illegal objects of the conspiracy. It is
4 sufficient if the government proves either of the illegal
5 objects, that is, to distribute drugs or to possess drugs
6 with intent to distribute them.

7 The gist of the crime of conspiracy is the
8 unlawful combination or agreement to violate the law. Whether
9 or not the conspirators succeed in accomplishing, whether they
10 accomplish in fact what it is they conspired to do is
11 immaterial to the question of their guilt or innocence of the
12 charge of conspiracy.

13 Thus, it is not necessary in a conspiracy case
14 for the government to prove that the conspiracy was successful.
15 As I have said, a conspiracy is sometimes called a partnership
16 in crime; a partnership for criminal purposes in which each
17 member becomes the agent of every other member.

18 Moreover, to establish a conspiracy, the
19 government is not required to show that two or more persons
20 sat down around a table and entered into a solemn compact,
21 orally or in writing, telling and stating that they had
22 formed a conspiracy, setting forth the details of the plan,
23 the means by which the unlawful objects would be attained,
24 and the part to be played by each member. It would be most
25 extraordinary if there ever were any such agreement. Your

2 common sense will tell you that when men and women undertake
3 to enter into a criminal conspiracy, much is left to unexpressed
4 understanding.

5 From its very nature, a conspiracy is invariably
6 secret in its origin and secret in its execution.

7 It is sufficient if two or more persons in any
8 manner through any contrivance, impliedly or tacitly come to
9 an understanding in common to violate the law. Express
10 language or specific words are not required to indicate
11 assent or attachment to a conspiracy.

12 In determining, members of the jury, whether there
13 has been an unlawful agreement, you may judge acts and conduct
14 of the alleged conspirators which are done to carry out an
15 apparent criminal purpose. Usually the only evidence available
16 is that of disconnected acts on the part of the alleged
17 individual conspirators, but which acts, when taken together
18 and in connection with each other, show a conspiracy or
19 agreement to secure a particular result as satisfactorily
20 and as conclusively as more direct proof.

21 If, for example, several persons got together and
22 shortly thereafter there is concerted action with each of them
23 doing something to relate it to the activities of the others,
24 all of which contribute in a similar manner toward the
25 accomplishment of the same unlawful objective, such evidence

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2 would support the inference that those persons had conspired
3 to accomplish that purpose.

4 You must first determine from all the
5 evidence whether or not a conspiracy as charged did in fact
6 exist. You should not judge the character and effect of
7 a conspiracy by dismembering it and viewing it in its
8 separate parts, but only by looking at it as a whole. It
9 is sufficient if, from proof of all the relevant facts, you
10 find beyond a reasonable doubt that the minds of at least
11 two co-conspirators met in an understanding way to bring about
12 a deliberate agreement to do the acts as charged in this
13 indictment.

14 If you do conclude that a conspiracy as
15 charged did exist, you must next determine whether the
16 defendant here on trial, Wilson Torres, was a member of the
17 conspiracy, that is, whether he knowingly and willingly
18 associated himself with the conspiracy. In making this
19 determination, you should examine and consider all the
20 evidence.

21 I should say of course that knowingly means
22 to do an act voluntarily and intentionally, and not because
23 of mistake or negligence or inadvertence or some other such
24 innocent reason.

25 Wilfully means to do an act deliberately and with

2 a bad motive; but it is not necessary that a defendant know
3 that he is violating a particular law.

4 Now mere association of one defendant with
5 another or of one defendant with an alleged conspirator or
6 even knowledge of the conspiracy standing alone does not
7 establish participation in the conspiracy; if you find that
8 in fact a conspiracy existed.

9 In determining whether the defendant Wilson
10 Torres was a member of the conspiracy, you are to consider
11 whether in some sense he made himself a part of the
12 venture, he in some sense promoted the venture himself.

13 The actions and declarations of a person who is
14 found by you to have been a member of the conspiracy made
15 during its pendency and in furtherance of its objectives
16 are considered the acts and declarations of each member of
17 the conspiracy. If there was in fact a partnership in crime,
18 then any act, statement, or declaration, of one partner in
19 furtherance of the partnership's purposes becomes the act and
20 declaration of every other partner, even though they might
21 not even have been present.

22 Now, members of the jury, we come to this
23 expression "overt act", which you have heard several times,
24 and which I should explain in more detail. An overt act is
25 an essential element of the conspiracy charge. It is an

essential element of proof, and an overt act is any step, action, or conduct, which is taken to achieve and accomplish or further the object of the conspiracy. It is not necessary for the government to prove all of the overt acts alleged in this indictment, or, indeed, to prove any of them. Proof of any one overt act, as I have just defined the term, is sufficient. An overt act is any step taken to further the conspiracy. You might wonder why Congress required proof of an overt act; and the reason is that people may conspire and agree to violate the law, to do an unlawful act, but they might change their minds before any act had been done to carry out the agreement; and if they change their minds, and no act to carry out the agreement is ever performed, then there has been no violation of the conspiracy statute.

There must be at least one step taken to carry out the conspiracy, and of course it makes no difference that the indictment alleges that an overt act took place on a certain date and you find from the evidence that it took place on some other date. It would be sufficient if it occurred on or about the date alleged in the indictment, and if there is proof of any one overt act, it would not matter if none of the particular acts alleged in the indictment were proven.

Now, the government is not required to show that that overt act is criminal in itself, because the overt act

2 may but need not itself be criminal. It may mean simply
3 engaging in conversation or meeting on a street corner,
4 and ordinarily such conduct would be entirely innocent, but
5 if engaging in a conversation or meeting on a street corner
6 is for the purpose of accomplishing the object of a conspiracy,
7 then such conduct ceases to be innocent, and becomes an overt act
8 in furtherance of the conspiracy.

9 Now, another principle to observe, members of the
10 jury, is that the guilt of a conspirator is not governed by the
11 extent or duration of his participation in the conspiracy;
12 or whether he had knowledge of all of its operations. Some
13 conspirators play major roles, other conspirators play minor
14 roles. Even if a conspirator joins the conspiracy after it
15 has been formed, and even if a conspirator is engaged in it,
16 to a degree more limited than the other conspirators, he is
17 equally culpable, equally guilty so long as he was a
18 co-conspirator.

19 In a word, it is not required that a person be
20 a member of the conspiracy from its start. He may join it at
21 any point and be held responsible for all that had been done
22 before he joined and all that may be done thereafter, so long
23 as he remains a member of the conspiracy.

24 Now, members of the jury, intent involves the
25 state of a person's mind, and while intent is a fact, it is a

2 fact which it is impossible to prove by direct evidence short
3 of an express admission by a defendant. Like any other fact,
4 however, intent may be proved by circumstantial evidence, and
5 proof of the circumstances surrounding a transaction may
6 supply an adequate and convincing basis for finding the intent
7 of a defendant.

8 Now a few words about the credibility of
9 witnesses. In weighing and determining the credibility of
10 witnesses, you rely on your ordinary common sense, your exper-
11 iences in your business and social lives, you draw on that past
12 experience and the degree of credibility to be given a
13 witness depends on your estimate based on demeanor here on
14 the witness stand, your observations, the substance of the
15 testimony, how did the answers strike you, did they seem
16 to be open, frank, full?

17 You take each one and on the basis of your
18 everyday experience you determine whether or not you believe
19 the witness and to what extent you may believe them.

20 If you should find that any witness has
21 testified falsely as to any material fact, you may reject the
22 entire testimony of that witness, or you may accept such part
23 of it as you believe and as you may find corroborated by other
24 evidence in the case.

25 You may consider, in determining the credibility

2 of a witness, whether the witness has any interest in the
3 matter, or any motive which might affect or color the
4 testimony.

5 An interested or motivated witness is not
6 necessarily unworthy of belief. It is only a factor for you to
7 take into account in determining what weight to give the
8 testimony.

9 Now, Madam Foreman, ladies and gentlemen of
10 the jury, the law does not compel a defendant in a criminal
11 case to take the witness stand and to testify; and no
12 presumption of guilt may be raised and no inference of any
13 kind may be drawn from the failure of a defendant to testify.

14 The intentional flight of a defendant, after
15 the commission of a crime, and after he is accused of a crime
16 or while his case is pending, is not itself sufficient to prove
17 guilt; but flight is a fact which, if proved, may be
18 considered by the jury in the light of all other evidence in
19 determining guilt or innocence.

20 Evidence of flight was admitted here for your
21 consideration, and your consideration of the evidence of flight
22 centers about whether it showed consciousness of guilt; and if
23 so, whether this is evidence of guilt of this defendant,
24 Mr. Torres.

25 In considering the evidence of flight, you should

2 also consider that there might be reasons for flight connected
3 with innocence. It may be that a feeling of guilt may not
4 necessarily reflect actual guilt. These are matters for
5 your consideration when you consider the evidence of flight
6 of the defendant.

7 Whether or not evidence of flight shows a
8 consciousness of guilt, and the significance to be
9 attached to such evidence, are matters exclusively within the
10 province of the jury, and the jury should bear in mind that the
11 burden or duty in a criminal case is not on the defendant to
12 call any witnesses or to produce any evidence.

13 Now, we come to the end of these instructions.
14 Each of you is entitled to his or her own opinion. You
15 should, however, exchange views with your fellow jurors amongst
16 yourselves. That is the very purpose of jury deliberations:
17 to discuss and consider the evidence, to listen to the
18 arguments of fellow jurors, to present your own individual
19 views, to consult with one another, and to reach an agreement
20 solely and wholly on the evidence if you can do so without
21 violence to your individual judgment.

22 Any verdict, members of the jury, must be
23 unanimous. Now the jury is not to consider or in any way
24 to speculate about the punishment which the defendant may receive
25 if he is found guilty. Under your oath as jurors, you cannot

2 allow a consideration of the punishment which a defendant
3 might receive if he is found guilty to influence your
4 verdict or to enter in any way into your deliberations.
5 The function of a jury is to determine the guilt or innocence
6 of a defendant on the basis of the evidence and these
7 instructions. It is the Judge alone, the Court, who has
8 the responsibility and the duty of determining the
9 sentence if there is a conviction.

10 Ladies and gentlemen, the charges here are
11 most serious. A just determination of the case is important
12 to the government and to the public. It's equally important
13 to the defendant. Under your oath as jurors, you must
14 decide the case without fear or favor, solely in accordance
15 with the evidence and the law.

16 If the government has failed to carry its burden,
17 your sworn duty is to bring in a verdict of not guilty. If
18 the government has carried its burden, you must not flinch
19 from your sworn duty but you must bring in a verdict of guilty.
20 The guilt or innocence of the defendant is for you and you
21 alone to determine. Your verdict will be returned orally by
22 your foreman in open court.

23 Your verdict will be either guilty or not
24 guilty. If, during your deliberations, you wish to see an
25 exhibit, Madam Forelady should send out a note by the marshal

2 and we'll send in the exhibit to you. If you should wish
3 any testimony read, likewise, Madam Foreman should send
4 a note through the marshal and your request will be considered
5 and if granted, as it normally is, arrangements will be made.

6 Now, I am giving Madam Foreman a copy of the
7 indictment which I say again is not evidence but is simply
8 for the convenient use of the jury to see what the charges
9 are.

10 Now we reach the point in the trial when we
11 must excuse our alternate jurors, Miss Goldsby and Mrs. Myers.
12 You ladies should realize that your services are as valuable
13 and as important as if you were a member of the 12 to
14 deliberate. We have alternate jurors because if some
15 emergency arises and a juror has to be excused, unless we had
16 alternate jurors the trial would simply have to stop and
17 start all over again with normally the loss of time and
18 expense that that involves.

19 So we thank you for your services as alternate
20 jurors. We'll excuse you now and you can take your things
21 from the jury room so that you will be removed when the
22 jury retires to deliberate.

23 Now, ladies and gentlemen of the jury, would
24 you wait patiently for a few minutes in the jury box in
25 silence while I see counsel and the reporter at the side bar

2 here for any last minute questions of law.

3 (At the side bar.)

4 THE COURT: Mr. Cutner?

5 MR. CUTNER: I have no problem, your Honor.

6 THE COURT: Mr. Naftalis?

7 MR. NAFTALIS: Just a couple of things, your
8 Honor. I am not sure if my recollection on this is
9 correct, and if it isn't that disposes of it.

10 I am not sure that you gave the complete
11 charge on presumption of innocence that you generally do.
12 As I say, that is just my recollection, and I know you
13 usually go through a whole thing about presumption carries
14 with you and only is removed when the jury finds beyond a
15 reasonable doubt. If it hasn't been given I would respectfully
16 request that it do be given.

17 THE COURT: It seemed to me that I charged
18 that the defendant is presumed innocent, didn't I?

19 MR. CUTNER: I know that you did, your
20 Honor. I am not sure that you gave all of the language to
21 which Mr. Naftalis refers but I know that you did give a
22 charge on the presumption of innocence.

23 THE COURT: If that's so then I think it's
24 been covered.

25 MR. NAFTALIS: I have a recollection of other

2 language which I know you traditionally give, your Honor,
3 and I respectfully request that if it has not been given,
4 and I don't recall it being given --

5 MR.CUTNER: I just don't recall.

6 THE COURT: All right. What else?

7 MR. NAFTALIS: Just let me except for the record
8 to one other part of your charge and I will be done. Your
9 Honor pointed out that group association creates greater
10 potentials in wrongdoing. I think, your Honor, under the
11 circumstances of this particular case, I would except to that
12 part of the charge, your Honor.

13 THE COURT: That is a standard expression,
14 and I think we use it here in the courthouse. I have been
15 doing it for years.

16 MR. NAFTALIS: I know you have, your Honor.
17 I just think in this case it may be because it's an
18 inchoate crime and that's all. Thank you.

19 (In open court.)

20 THE COURT: Mr. Clerk, will you swear the
21 marshal?

22 (A United States Marshal was duly sworn.)

23 THE COURT: Now, Madam Foreman, ladies and
24 gentlemen of the jury, the case is submitted to you for your
25 decision. The marshal will go with you to the jury room.

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